



20 January 2021

Senior Planner: Brian Millard  
Direct Phone: 4086 4657  
Our Reference: RAL/20/0012  
Your Reference: PR123862

B Stevenson & K Jones,  
as Trustees for Basky Investment Trust  
C/- RPS Australia East Pty Ltd  
PO Box 1949  
CAIRNS QLD 4870

*Attn: Owen Caddick-King*

Dear Applicant/s

## Decision Notice

### *Planning Act 2016*

I refer to your application and advise that on 20 January 2021, Council decided to approve the application in full subject to conditions.

Details of the decision are as follows:

#### APPLICATION DETAILS

Application No: RAL/20/0012  
Street Address: Antonio Drive, Mareeba  
Real Property Description: Lot 2 on SP298397  
Planning Scheme: Mareeba Shire Council Planning Scheme 2016

#### DECISION DETAILS

Type of Decision: Approval  
Type of Approval: Development Permit for Reconfiguring a Lot - Subdivision (1 into 27 Lots)  
Date of Decision: 20 January 2021

#### CURRENCY PERIOD OF APPROVAL

The currency period for this development approval is four (4) years starting the day that this development approval takes effect. (Refer to Section 85 "Lapsing of approval at end of currency period" of the *Planning Act 2016*.)

**INFRASTRUCTURE**

Where conditions relate to the provision of infrastructure, these are non-trunk infrastructure conditions unless specifically nominated as a "*necessary infrastructure condition*" for the provision of trunk infrastructure as defined under Chapter 4 of the *Planning Act 2016*.

**ASSESSMENT MANAGER CONDITIONS**

## (A) ASSESSMENT MANAGER'S CONDITIONS (COUNCIL)

(a) Development assessable against the Planning Scheme

1. Development must be carried out generally in accordance with the approved plans and the facts and circumstances of the use as submitted with the application, and subject to any alterations:
  - found necessary by the Council's delegated officer at the time of examination of the engineering plans or during construction of the development because of particular engineering requirements; and
  - to ensure compliance with the following conditions of approval.
2. Timing of Effect
  - 2.1 The conditions of the development permit must be complied with to the satisfaction of Council's delegated officer prior to the endorsement of the plan of survey of the development, or alternative documentation as approved by the Land Title Act, except where specified otherwise in these conditions of approval.
3. General
  - 3.1 The applicant/developer is responsible for the cost of necessary alterations to existing public utility mains, services or installations required by works in relation to the proposed development or any works required by condition(s) of this approval.
  - 3.2 All payments or bonds required to be made to the Council pursuant to any condition of this approval or the Adopted Infrastructure Charges Notice must be made prior to the endorsement of the plan of survey, or alternative documentation as approved by the Land Title Act and at the rate applicable at the time of payment.
  - 3.3 The developer must relocate (in accordance with FNQROC standards) any services such as water, sewer, drainage, telecommunications and electricity that are not wholly located within the lots that are being created/serviced where required by the relevant authority, unless approved by Council's delegated officer.
  - 3.4 Where utilities (such as sewers on non-standard alignments) traverse lots to service another lot, easements must be created in favour of Council for access and maintenance purposes. The developer is to pay all costs (including Council's legal expenses) to prepare and register the easement documents.

3.5 All works must be designed, constructed and carried out in accordance with FNQROC Development Manual requirements (as amended) and to the satisfaction of Council's delegated officer.

3.6 Charges

All outstanding rates, charges, and expenses pertaining to the land are to be paid in full.

4 Infrastructure Services and Standards

4.1 Access

(a) Access to each allotment must be constructed (from the edge of the road pavement to the property boundary of each lot) in accordance with the FNQROC Development Manual, to the satisfaction of Council's delegated officer.

The provision of roll-over kerb along the frontage of each allotment will satisfy this condition.

(b) An asphalt sealed, or concrete driveway shall be provided within each access handle of proposed Lots 15, 101 and 102 to the satisfaction of Council's delegated officer. The driveway will:

- have a minimum formation width of 3 metres
- be constructed for the full length of the access handle
- be formed with one-way crossfall to cater for stormwater drainage such that any stormwater runoff is contained within the access handle
- service and utility conduits are to be provided for the full length of the concrete or sealed driveway constructed within the access handle.

4.2 Stormwater Drainage

(a) The applicant/developer must take all necessary steps to ensure a non-worsening effect on surrounding land as a consequence of the development.

(b) Prior to works commencing the applicant must submit a Stormwater Management Plan and Report prepared and certified by a suitably qualified design engineer (RPEQ) that meets or exceeds the standards of design and construction set out in the Queensland Urban Drainage Manual (QUDM) and the FNQROC Development Manual to the satisfaction of Council's delegated officer.

(c) Prior to works commencing the applicant must submit a Stormwater Quality Management Plan and Report prepared and certified by a suitably qualified design engineer (RPEQ) that meets or exceeds the standards of design and construction set out in the Urban Stormwater Quality Planning Guideline and the Queensland Water Quality Guideline to the satisfaction of Council's delegated officer.

(d) The Stormwater Quality Management Plan must include an Erosion and Sediment Control Plan that meets or exceeds the Soil Erosion and

Sedimentation Control Guidelines (Institute of Engineers Australia) to the satisfaction of Council's delegated officer.

- (e) The applicant/developer must construct the stormwater drainage infrastructure in accordance with the approved Stormwater Management Plan and/or Stormwater Quality Management Plan and Report.
- (f) Temporary drainage is to be provided and maintained during the construction phase of the development, discharged to a lawful point and not onto the construction site.
- (g) All stormwater channels through private property must be registered, with the easement for drainage purposes in favour of Council. All documentation leading to the registration of the easement must be completed at no cost to Council.
- (h) All stormwater drainage collected from the site must be discharged to an approved legal point of discharge.
- (i) The applicant (at their cost) must video all stormwater lines and submit the video for inspection by Council's delegated officer prior to the development being taken "off maintenance" to ensure that no defects have occurred during the 12 month maintenance period.

#### 4.3 Earthworks

All earthworks must be carried out in accordance with the requirements of the FNQROC Development Manual (as amended) to the satisfaction of Council's delegated officer.

All formed batters must be located outside the road reserves.

#### 4.4 Roadworks - Internal

- (a) The new internal road is to be constructed to Access Street standard in accordance with the FNQROC Development Manual (as amended) to the satisfaction of Council's delegated officer.
- (b) A temporary turnaround area, with a gravel surface, must be provided at the southern end of the new road as part of Stage 2.

#### 4.5 Water Supply

- (a) Where the existing reticulated water supply does not currently service the site or is not at an adequate capacity, the developer is required to extend or upgrade the reticulated water supply infrastructure to connect the site to Council's existing infrastructure at a point that has sufficient capacity to service the development in accordance with FNQROC Development Manual standards (as amended).
- (b) A water service connection must be provided to each proposed lot in accordance with FNQROC Development Manual standards (as amended) to the satisfaction of Council's delegated officer.

#### 4.6 Sewerage Connection

The developer must connect the proposed development to Council's reticulated sewerage system in accordance with FNQROC Development

Manual standards (as amended) to the satisfaction of Council’s delegated officer.

Where sewerage connections are not available to the site, or where existing connections are not satisfactory for the proposed development, the developer is required to extend or upgrade the reticulated sewerage infrastructure to connect the site to Council’s existing infrastructure at a point that has sufficient capacity to service the development in accordance with FNQROC Development Manual standards (as amended).

4.7 Electricity provision/supply

The applicant/developer must ensure that an appropriate level of electricity supply is provided to each allotment in accordance with FNQROC Development Manual standards (as amended) to the satisfaction of Council’s delegated officer.

Written advice from an Electricity Service Provider is to be provided to Council indicating that an agreement has been made for the provision of **underground** power reticulation.

4.8 Telecommunications

The applicant/developer must enter into an agreement with a telecommunication carrier to provide telecommunication services to each allotment and arrange provision of necessary conduits and enveloping pipes.

4.9 Lighting

Street lighting must be provided to all roads in accordance with FNQROC Development requirements (as amended) and to the satisfaction of Council's delegated officer.

**REFERRAL AGENCIES**

The referral agencies applicable to this application are:

Reconfiguring a lot near a State transport corridor		
Development application for reconfiguring a lot that is assessable development under section 21, if—	Schedule 10, Part 9, Division 4, Subdivision 2, Table 1	State Assessment & Referral Agency (SARA) PO Box 2358 Cairns QLD 4870 <a href="mailto:CairnsSARA@dsmip.qld.gov.au">CairnsSARA@dsmip.qld.gov.au</a>
(a) all or part of the premises are within 25m of a State transport corridor; and		
(b) 1 or more of the following apply—		
(i) the total number of lots is increased;		
(ii) the total number of lots adjacent to the State transport corridor is increased;		
(iii) there is a new or changed access between the premises and the State transport corridor;		
(iv) an easement is created adjacent to a railway as defined under the		

Transport Infrastructure Act, schedule 6; and  (c) the reconfiguration does not relate to government supported transport infrastructure		
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A copy of any referral agency conditions are attached.

**APPROVED PLANS**

The following plans are Approved plans for the development:

Plan/Document Number	Plan/Document Title	Prepared by	Dated
PR123862-8 B	Proposed Lots 1-25, 101, 102 & 901 cancelling Lot 2 on SP298397 Antonio Drive Mareeba	RPS	25-11-2020
Sketch 1464-1C	Stormwater Drainage Master Plan	Trinity Engineering and Consulting	17 November 2020
Sketch 1464-2B	Sewer Reticulation Master Plan	Trinity Engineering and Consulting	6 October 2020
Sketch 1464-3C	Water Reticulation Master Plan	Trinity Engineering and Consulting	17 November 2020
Sketch 1464-4C	Catchment Plan	Trinity Engineering and Consulting	17 November 2020
Sketch 1464-5B	Concept Earthworks Grading Plan	Trinity Engineering and Consulting	16 November 2020

**ADVISORY NOTES**

The following notes are included for guidance and information purposes only and do not form part of the assessment manager conditions:

(A) ASSESSMENT MANAGER’S ADVICE

- (a) An Adopted Infrastructure Charges Notice has been issued with respect to the approved development. The Adopted Infrastructure Charges Notice details the type of infrastructure charge/s, the amount of the charge/s and when the charge/s are payable.
- (b) The Adopted Infrastructure Charges Notice does not include all charges or payments that are payable with respect to the approved development. A number of other charges or payments may be payable as conditions of approval. The applicable fee is set out in Council’s Fees & Charges Schedule for each respective financial year.
- (c) Easement Documents

Council has developed standard easement documentation to assist in the drafting of formal easement documents for Council easements. Please contact the Planning

Section for more information regarding the drafting of easement documents for Council easements.

(d) Endorsement Fees

Council charges a fee for the endorsement of a Survey Plan, Community Management Statements, easement documents, and covenants. The fee is set out in Council's Fees & Charges Schedule applicable for each respective financial year.

(e) Compliance with applicable codes/policies

The development must be carried out to ensure compliance with the provisions of Council's Local Laws, Planning Scheme Policies, Planning Scheme and Planning Scheme Codes to the extent they have not been varied by a condition of this approval.

(f) Transportation of Soil

All soil transported to or from the site must be covered to prevent dust or spillage during transport. If soil is tracked or spilt onto the road pavements as a result of works on the subject site, it must be removed prior to the end of the working day and within four (4) hours of a request from a Council Officer.

(g) Environmental Protection and Biodiversity Conservation Act 1999

The applicant is advised that referral may be required under the *Environmental Protection and Biodiversity Conservation Act 1999* if the proposed activities are likely to have a significant impact on a matter of national environmental significance. Further information on these matters can be obtained from [www.environment.gov.au](http://www.environment.gov.au).

(h) Cultural Heritage

In carrying out the activity the applicant must take all reasonable and practicable measures to ensure that no harm is done to Aboriginal cultural heritage (the "cultural heritage duty of care"). The applicant will comply with the cultural heritage duty of care if the applicant acts in accordance with gazetted cultural heritage duty of care guidelines. An assessment of the proposed activity against the duty of care guidelines will determine whether or to what extent Aboriginal cultural heritage may be harmed by the activity. Further information on cultural heritage, together with a copy of the duty of care guidelines and cultural heritage search forms, may be obtained from [www.datsip.qld.gov.au](http://www.datsip.qld.gov.au).

(B) REFERRAL AGENCY CONDITIONS

Queensland Treasury conditions dated 4 December 2020.

**FURTHER DEVELOPMENT PERMITS REQUIRED**

- Development Permit for Operational Work

**SUBMISSIONS**

Not Applicable.

**RIGHTS OF APPEAL**

You are entitled to appeal against this decision. A copy of the relevant appeal provisions from the *Planning Act 2016* is attached.

During the appeal period, you as the applicant may suspend your appeal period and make written representations to council about the conditions contained within the development approval. If council agrees or agrees in part with the representations, a "negotiated decision notice" will be issued. Only one "negotiated decision notice" may be given. Taking this step will defer your appeal period, which will commence again from the start the day after you receive a "negotiated decision notice".

**OTHER DETAILS**

If you wish to obtain more information about Council's decision, electronic copies are available on line at [www.msc.qld.gov.au](http://www.msc.qld.gov.au), or at Council Offices.

Yours faithfully



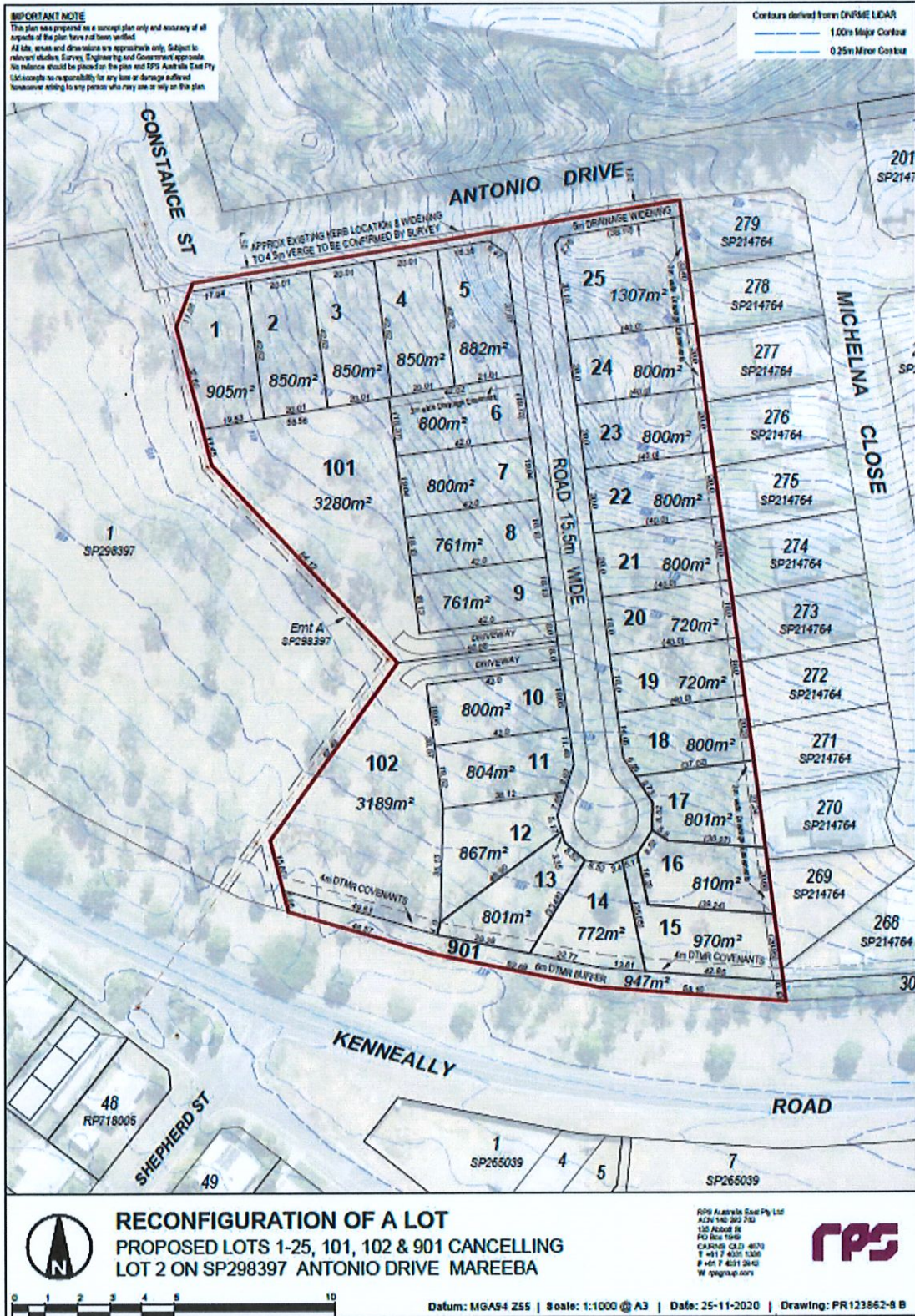
**BRIAN MILLARD**  
**SENIOR PLANNER**

Enc: Approved Plans/Documents  
Referral Agency Response  
Appeal Rights  
Adopted Infrastructure Charge Notice

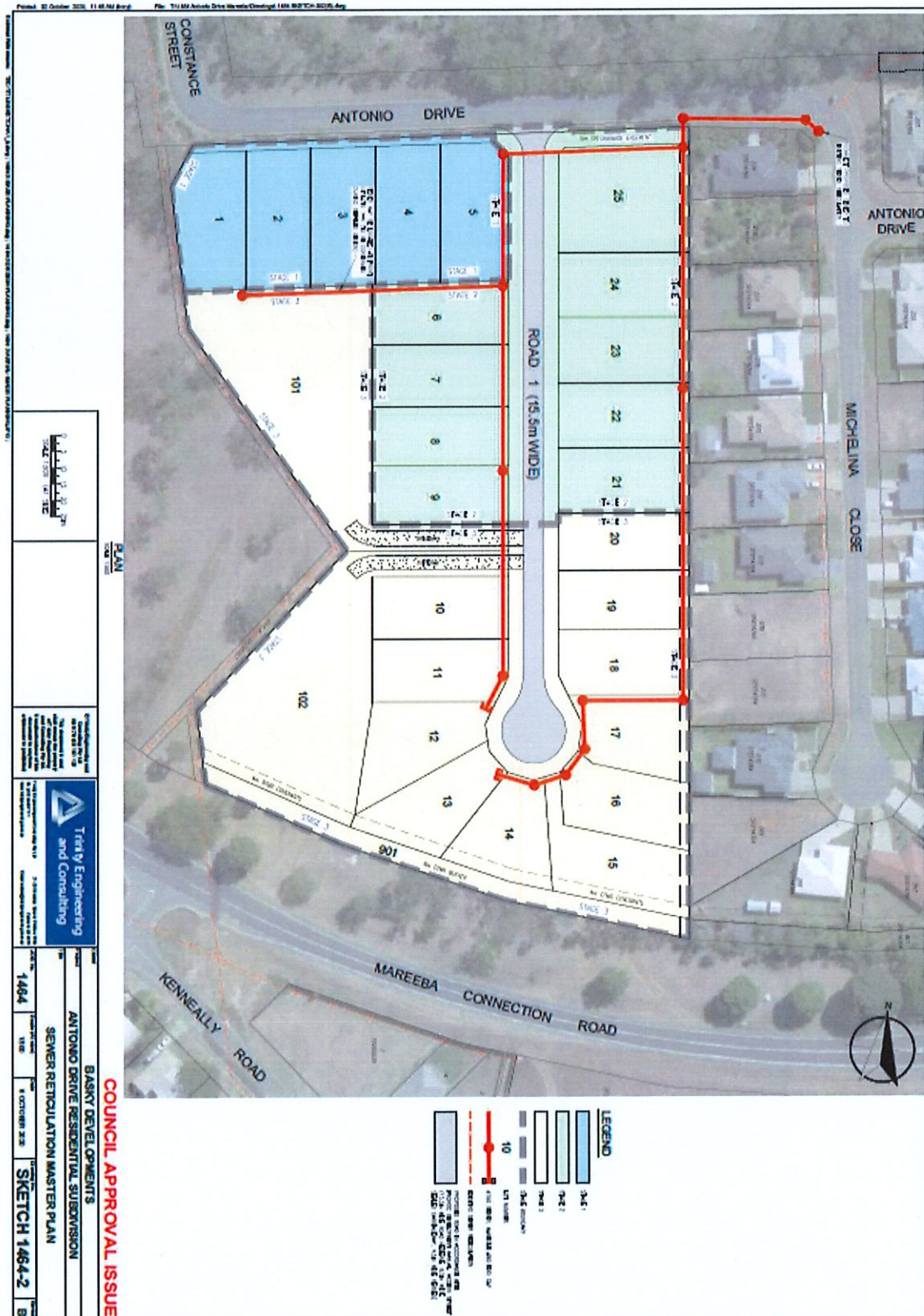
Copy: Department of State Development, Manufacturing, Infrastructure and Planning  
[CairnsSARA@dsmip.qld.gov.au](mailto:CairnsSARA@dsmip.qld.gov.au)



# Approved Plans/Documents







**LEGEND**

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- 3-2: [Light blue shaded area]
- 3-1: [White area]
- 10: [Red line]

3-6: 3-6 ZONE  
 3-2: 3-2 ZONE  
 3-1: 3-1 ZONE  
 10: 10' BUFFER, 10' BUFFER AND 10' BUFFER  
 10: 10' BUFFER, 10' BUFFER AND 10' BUFFER

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 PROJECT: BASKY DEVELOPMENTS  
 FILE: 1484-2-11

**PLAN**

**COUNCIL APPROVAL ISSUE**

**BASKY DEVELOPMENTS**

**ANTONIO DRIVE RESIDENTIAL SUBDIVISION**

**SEWER RETENTION MASTER PLAN**

1484-2-11

1484

14 OCT 2019

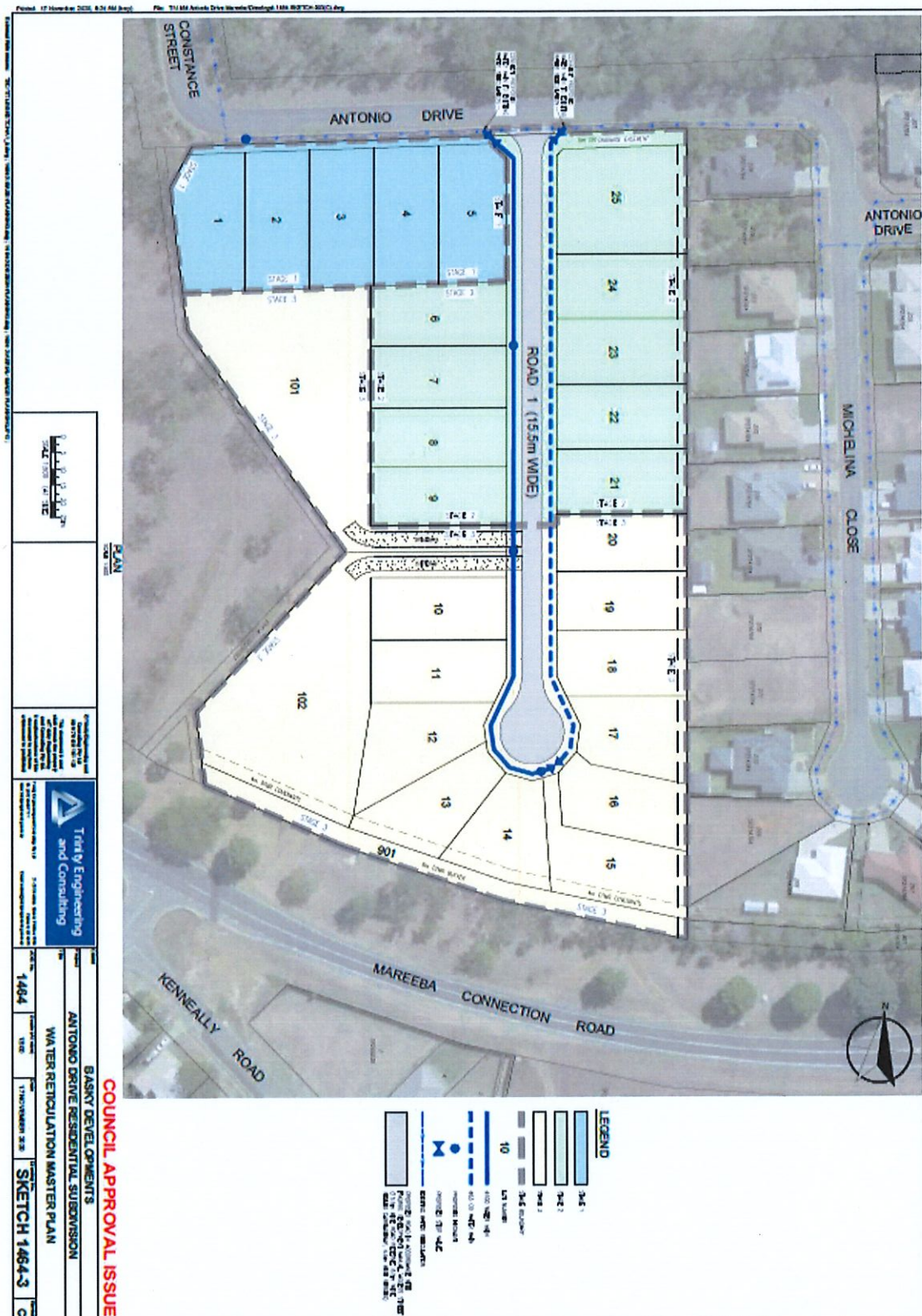
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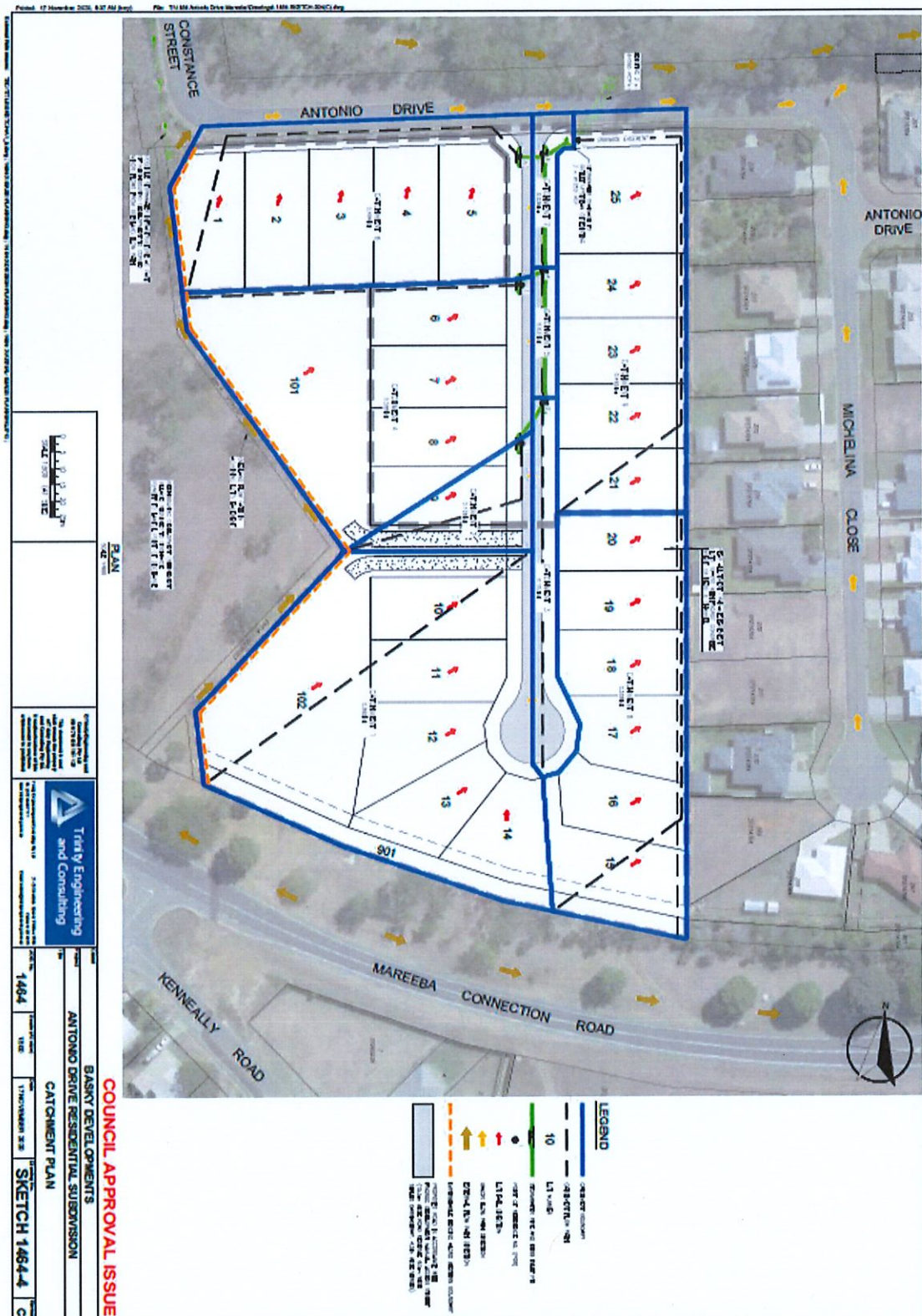
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**COUNCIL APPROVAL ISSUE**

**BASKY DEVELOPMENTS**

**ANTONIO DRIVE RESIDENTIAL SUBDIVISION**

**CATCHMENT PLAN**

**SKETCH 1484-4 C**

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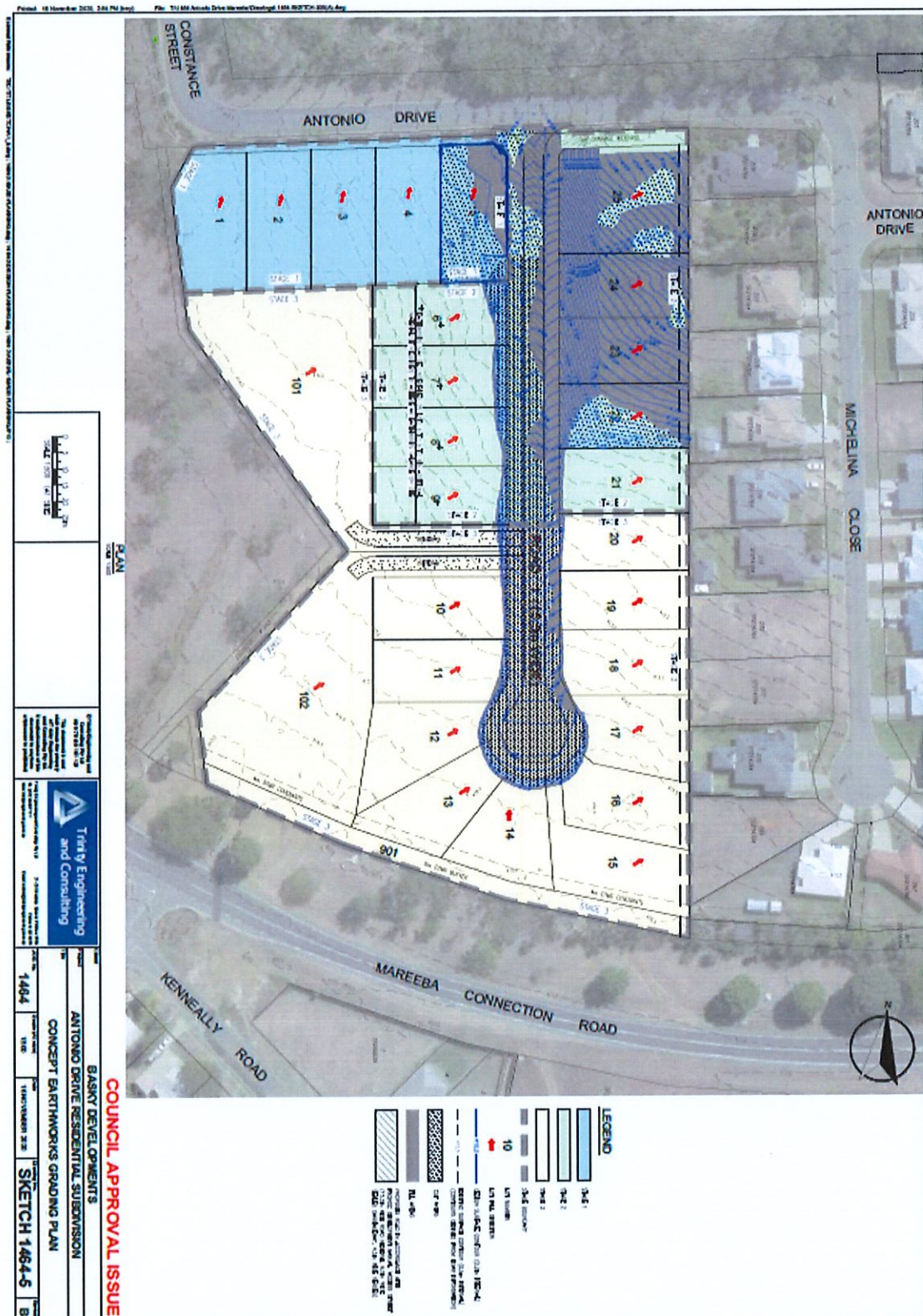
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## Referral Agency Response

RA5-N



Queensland Treasury

SARA reference: 2011-10006 SRA  
 Council reference: RAL/20/0012  
 Applicant reference: PR123862

4 December 2020

Chief Executive Officer  
 Mareeba Shire Council  
 PO Box 154  
 Mareeba Qld 4880  
 planning@msc.qld.gov.au

Attention: Brian Millard

Dear Sir/Madam

### SARA response—2-18 Haren Street, Mareeba

(Referral agency response given under section 56 of the *Planning Act 2016*)

The development application described below was confirmed as properly referred by the State Assessment and Referral Agency on 6 November 2020.

### Response

Outcome:	Referral agency response – with conditions.
Date of response:	4 December 2020
Conditions:	The conditions in <b>Attachment 1</b> must be attached to any development approval.
Advice:	Advice to the applicant is in <b>Attachment 2</b> .
Reasons:	The reasons for the referral agency response are in <b>Attachment 3</b> .

### Development details

Description:	Development permit	Reconfiguring a lot (1 Lot into 27 Residential Lots)
SARA role:	Referral Agency.	
SARA trigger:	(Planning Regulation 2017)	
SARA reference:	2011-10006 SRA	
Assessment Manager:	Mareeba Shire Council	

Far North Queensland regional office  
 Ground Floor, Cnr Grafton and Hartley  
 Street, Cairns  
 PO Box 2358, Cairns QLD 4870

Page 1 of 6

2011-19806 SRA

Street address: 2-18 Haren Street, Mareeba  
Real property description: Lot 2 on SP298397  
Applicant name: Brett Stevenson and Kylie Jones, trustees for Basky Investment Trust  
C/- RPS Group  
Applicant contact details: 135 Abbott Street  
Cairns QLD 4870  
owen.caddick-king@rpsgroup.com.au  
State-controlled road access permit: This referral included an application for a road access location, under section 62A(2) of *Transport Infrastructure Act 1994*. Below are the details of the decision:  

- Access prohibited
- Reference: TMR20-031426 (500-1531)
- Date: 25 November 2020

If you are seeking further information on the road access permit, please contact the Department of Transport and Main Roads at [cairns.office@tmr.qld.gov.au](mailto:cairns.office@tmr.qld.gov.au)

## Representations

An applicant may make representations to a concurrence agency, at any time before the application is decided, about changing a matter in the referral agency response (s.30 Development Assessment Rules)

Copies of the relevant provisions are in Attachment 4.

A copy of this response has been sent to the applicant for their information.

For further information please contact Jarrod Clarke, Planning Officer, on 40373208 or via email [CairnsSARA@dsdmip.qld.gov.au](mailto:CairnsSARA@dsdmip.qld.gov.au) who will be pleased to assist.

Yours sincerely



Brett Nancarrow  
Manager (Planning)

cc Brett Stevenson and Kylie Jones, trustees for Basky Investment Trust, [owen.caddick-king@rpsgroup.com.au](mailto:owen.caddick-king@rpsgroup.com.au)

enc Attachment 1 - Referral agency conditions  
Attachment 2 - Advice to the applicant  
Attachment 3 - Reasons for referral agency response  
Attachment 4 - Representations provisions



2011-19806 SRA

**Attachment 1—Referral agency conditions**

(Under section 56(1)(b)(i) of the *Planning Act 2016* the following conditions must be attached to any development approval relating to this application) (Copies of the plans and specifications referenced below are found at Attachment 5)

No.	Conditions	Condition timing
<b>Reconfiguring a lot</b>		
Schedule 10, Part 9, Division 4, Subdivision 2, Table 1 - The chief executive administering the <i>Planning Act 2016</i> nominates the Director-General of Department of Transport and Main Roads to be the enforcement authority for the development to which this development approval relates for the administration and enforcement of any matter relating to the following conditions:		
1.	<p>a) Noise attenuation measures must be provided along the boundary with Mareeba-connection Road to achieve the following noise criteria must be provided:</p> <ul style="list-style-type: none"> <li>• <math>\leq 57</math> dB(A) <math>L_{10}</math> (18 hour) free field (measured <math>L_{90}</math> (18 hour) free field between 6am and 12 midnight <math>\leq 45</math> dB(A).</li> <li>• <math>\leq 60</math> dB(A) <math>L_{10}</math> (18 hour) free field (measured <math>L_{90}</math> (18 hour) free field between 6am and 12 midnight <math>&gt; 45</math> dB(A).</li> </ul> <p>b) Noise attenuation measures must be provided in accordance with chapter 7 integrated noise barrier design of the Transport Noise Management Code of Practice: Volume 1 (Road Traffic Noise), Department of Transport and Main Roads, 2013.</p> <p>c) RPEQ certification must be provided to Program, Delivery and Operations, Far North District at: <a href="mailto:Far.North.Queensland.IDAS@tmr.qld.gov.au">Far.North.Queensland.IDAS@tmr.qld.gov.au</a> within the Department of Transport and Main Roads, confirming that the development has been constructed in accordance with part (a) of this condition.</p>	(a), (b) & (c) Prior to submitting the Plan of Survey to the local government for approval and to be maintained at all times.
2.	<p>a) Stormwater management of the development must ensure no worsening or actionable nuisance to the state-controlled road.</p> <p>b) Any works on the land must not:</p> <ol style="list-style-type: none"> <li>(i) create any new discharge points for stormwater runoff onto the state-controlled road;</li> <li>(ii) interfere with and/or cause damage to the existing stormwater drainage on the state-controlled road;</li> <li>(iii) surcharge any existing culvert or drain on the state-controlled road;</li> <li>(iv) reduce the quality of stormwater discharge onto the state-controlled road.</li> </ol>	(a) & (b) At all times.
3.	Direct access is not permitted between the Mareeba-Connection Road and the subject site.	At all times.

2011-19606 SRA

**Attachment 2—Advice to the applicant**

<b>General advice</b>	
1.	Terms and phrases used in this document are defined in the <i>Planning Act 2016</i> its regulation or the State Development Assessment Provisions (SDAP) [v2.6]. If a word remains undefined it has its ordinary meaning.
<b>Corridor Transport Noise</b>	
2.	<p>Mandatory Part (MP) 4.4 of the Queensland Development Code (QDC) commenced on 1 September 2010 and applies to building work for the construction or renovation of a residential building in a designated transport noise corridor. MP4.4 seeks to ensure that the habitable rooms of Class 1, 2, 3 and 4 buildings located in a transport noise corridor are designed and constructed to reduce transport noise. Transport noise corridor means land designated under Chapter 8B of the Building Act 1975 as a transport noise corridor. Information about transport noise corridors is available at state and local government offices.</p> <p>A free online search tool can be used to find out whether a property is located in a designated transport noise corridor. This tool is available at the State Planning Policy Interactive Mapping System website: <a href="https://spp.dsdip.esriaustraliaonline.com.au/geoviewer/map/planmaking">https://spp.dsdip.esriaustraliaonline.com.au/geoviewer/map/planmaking</a> and allows searches on a registered lot number and/or property address to determine whether and how the QDC applies to the land. Transport Noise Corridors are located under Information Purposes within Transport Infrastructure of the State Planning Policy (SPP) mapping system.</p>

2011-19606 SRA

**Attachment 3—Reasons for referral agency response***(Given under section 56(7) of the Planning Act 2016)*

The reasons for the department's decision are:

- The proposed development:
  - does not create a safety hazard for users of the adjacent State-controlled road, by increasing the likelihood or frequency of fatality or serious injury.
  - does not compromise the structural integrity of the State-controlled road.
  - does not result in a worsening of the physical condition of the State-controlled road.

Material used in the assessment of the application:

- The development application material and submitted plans
- *Planning Act 2016*
- *Planning Regulation 2017*
- *The State Development Assessment Provisions* (version [2.6]), as published by the department
- The Development Assessment Rules
- SARA DA Mapping system
- State Planning Policy mapping system

2011-19606 SRA

**Attachment 4—Change representation provisions**

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(page left intentionally blank – attached separately)

## Development Assessment Rules—Representations about a referral agency response

The following provisions are those set out in sections 28 and 30 of the Development Assessment Rules<sup>1</sup> regarding representations about a referral agency response

### Part 6: Changes to the application and referral agency responses

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#### 28 Concurrence agency changes its response or gives a late response

- 28.1. Despite part 2, a concurrence agency may, after its referral agency assessment period and any further period agreed ends, change its referral agency response or give a late referral agency response before the application is decided, subject to section 28.2 and 28.3.
- 28.2. A concurrence agency may change its referral agency response at any time before the application is decided if—
- (a) the change is in response to a change which the assessment manager is satisfied is a change under section 28.1; or
  - (b) the Minister has given the concurrence agency a direction under section 99 of the Act; or
  - (c) the applicant has given written agreement to the change to the referral agency response.<sup>2</sup>
- 28.3. A concurrence agency may give a late referral agency response before the application is decided, if the applicant has given written agreement to the late referral agency response.
- 28.4. If a concurrence agency proposes to change its referral agency response under section 28.2(a), the concurrence agency must—
- (a) give notice of its intention to change its referral agency response to the assessment manager and a copy to the applicant within 5 days of receiving notice of the change under section 25.1; and
  - (b) the concurrence agency has 10 days from the day of giving notice under paragraph (a), or a further period agreed between the applicant and the concurrence agency, to give an amended referral agency response to the assessment manager and a copy to the applicant.

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<sup>1</sup> Pursuant to Section 68 of the *Planning Act 2016*

<sup>2</sup> In the instance an applicant has made representations to the concurrence agency under section 30, and the concurrence agency agrees to make the change included in the representations, section 28.2(c) is taken to have been satisfied.

## **Part 7: Miscellaneous**

### **30 Representations about a referral agency response**

- 30.1. An applicant may make representations to a concurrence agency at any time before the application is decided, about changing a matter in the referral agency response.<sup>3</sup>

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<sup>3</sup> An applicant may elect, under section 32, to stop the assessment manager's decision period in which to take this action. If a concurrence agency wishes to amend their response in relation to representations made under this section, they must do so in accordance with section 28.

## Appeal Rights

PLANNING ACT 2016 & THE PLANNING REGULATION 2017

### Chapter 6 Dispute resolution

#### Part 1 Appeal rights

##### 229 Appeals to tribunal or P&E Court

- (1) Schedule 1 of the Planning Act 2016 states –
- (a) Matters that may be appealed to –
    - (i) either a tribunal or the P&E Court; or
    - (ii) only a tribunal; or
    - (iii) only the P&E Court; and
  - (b) The person-
    - (i) who may appeal a matter (**the appellant**); and
    - (ii) who is a respondent in an appeal of the matter; and
    - (iii) who is a co-respondent in an appeal of the matter; and
    - (iv) who may elect to be a co-respondent in an appeal of the matter.

(Refer to Schedule 1 of the Planning Act 2016)

- (2) An appellant may start an appeal within the appeal period.
- (3) The **appeal period** is –
- (a) for an appeal by a building advisory agency – 10 business days after a decision notice for the decision is given to the agency; or
  - (b) for an appeal against a deemed refusal – at any time after the deemed refusal happens; or
  - (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises – 20 business days after a notice is published under section 269(3)(a) or (4); or
  - (d) for an appeal against an infrastructure charges notice – 20 business days after the infrastructure charges notice is given to the person; or
  - (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given – 30 business days after the applicant gives the deemed approval notice to the assessment manager; or
  - (f) for any other appeal – 20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

*Note –*

*See the P&E Court Act for the court's power to extend the appeal period.*

- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.
- (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.
- (6) To remove any doubt. It is declared that an appeal against an infrastructure charges notice must not be about-

- (a) the adopted charge itself; or
- (b) for a decision about an offset or refund-
  - (i) the establishment cost of trunk infrastructure identified in a LGIP; or
  - (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

### 230 Notice of appeal

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that-
  - (a) is in the approved form; and
  - (b) succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.
- (3) The appellant or, for an appeal to a tribunal, the registrar must, within the service period, give a copy of the notice of appeal to –
  - (a) the respondent for the appeal ; and
  - (b) each co-respondent for the appeal; and
  - (c) for an appeal about a development application under schedule 1, table 1, item 1 – each principal submitter for the development application; and
  - (d) for an appeal about a change application under schedule 1, table 1, item 2 – each principal submitter for the change application; and
  - (e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); and
  - (f) for an appeal to the P&E Court – the chief executive; and
  - (g) for an appeal to a tribunal under another Act – any other person who the registrar considers appropriate.
- (4) The *service period* is –
  - (a) if a submitter or advice agency started the appeal in the P&E Court – 2 business days after the appeal has started; or
  - (b) otherwise – 10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
- (6) A person elects to be a co-respondent by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.

### 231 Other appeals

- (1) Subject to this chapter, schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.
- (2) The *Judicial Review Act 1991*, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
- (3) A person who, but for subsection (1) could have made an application under the *Judicial Review Act 1991* in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.
- (4) In this section –  
*decision* includes-
  - (a) conduct engaged in for the purpose of making a decision; and
  - (b) other conduct that relates to the making of a decision; and
  - (c) the making of a decision or failure to make a decision; and



(d) a purported decision ; and

(e) a deemed refusal.

*non-appealable*, for a decision or matter, means the decision or matter-

(a) is final and conclusive; and

(b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the Judicial Review Act 1991 or otherwise, whether by the Supreme Court, another court, a tribunal or another entity; and

(c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.

#### 232 Rules of the P&E Court

- (1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.
- (2) However, the P&E Court may hear and decide an appeal even if the person has not complied with the rules of the P&E Court.